

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF WEST VIRGINIA

**FILED**

AUG 25 2008

TERESA L. DEPPNER, CLERK  
U.S. District Court  
Southern District of West Virginia

Arthur Ballinger #

42016-4

(Enter above the full name of the plaintiff  
or plaintiffs in this action).

(Inmate Reg. # of each Plaintiff)

VERSUS

CIVIL ACTION NO.

2:08-1024

(Number to be assigned by Court)

CO II Garrett Adams

CO II John Young

(Enter above the full name of the defendant  
or defendants in this action)

**COMPLAINT**

**I. Previous Lawsuits**

- A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to your imprisonment?

Yes \_\_\_\_\_

No ☒ \_\_\_\_\_

B. If your answer to A is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline).

1. Parties to this previous lawsuit:

Plaintiffs: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Defendants: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

2. Court (if federal court, name the district; if state court, name the county);

\_\_\_\_\_

\_\_\_\_\_

3. Docket Number: \_\_\_\_\_

4. Name of judge to whom case was assigned:

\_\_\_\_\_

5. Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending?)

\_\_\_\_\_

\_\_\_\_\_

6. Approximate date of filing lawsuit: \_\_\_\_\_

7. Approximate date of disposition: \_\_\_\_\_

II. Place of Present Confinement: Mount Olive Correctional Complex

A. Is there a prisoner grievance procedure in this institution?

Yes ✓ No       

B. Did you present the facts relating to your complaint in the state prisoner grievance procedure?

Yes ✓ No       

C. If you answer is YES:

1. What steps did you take? G-1 to Capt., Appeal

to Warden, Appeal to Commissioner

2. What was the result? denied on capt.'s level

denied on Wardens level, Denied on Commissioner level

D. If your answer is NO, explain why not: \_\_\_\_\_

### III. Parties

(In item A below, place your name and inmate registration number in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any.)

A. Name of Plaintiff: \_\_\_\_\_

Address: \_\_\_\_\_

B. Additional Plaintiff(s) and Address(es): \_\_\_\_\_

(In item C below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item D for the names, positions, and places of employment of any additional defendants.)

C. Defendant: COTI John Young

is employed as: COTI

at Mount Olive Correctional Complex

D. Additional defendants: COTI GARRETT Adams, Cpl.

NATE Kendrick and Sgt. Don Slack

are all employed at Mount Olive

Correctional Complex

#### IV. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheets if necessary.)

I was going to magistrate court, for a disciplinary hearing and was told to put my shoulder on the wall and shackled by officer John YOUNG, I was told to turn and walk out the "A" door as I was walking out the "A" door I was punched by officer GARRETT ADAMS and taken to the floor and was beaten by him and OFFICER John YOUNG and then was taken to the multi purpose room, where I was beaten again by several OFFICERS then checked by MS, Foster

IV. Statement of Claim (continued):

"LPN" she looked at me and was told to leave and I was beaten again on Video TAPE I was in a chair LT. McCloud told me I had another beating from the Capt. and the one I took from him I would be going to Medical on a gurney he then punched me in my mouth and my teeth were knocked out, then punched in the ribs over and over

V. Relief

State briefly exactly what you want the court to do for you. Make no legal arguments.  
Cite no cases or statutes.

I would like to have this honorable court award plaintiff fiscal damages for my two front teeth chipped in the assault.

I was not allowed to complain about injuries because after the first beating they had Ms. Foster check my side and after she left, I was beaten again sustaining more injuries, I told the Sgt. I had swallowed my teeth but he said they'll come out the other end and I was beaten again, they will not take a picture of me ~~now~~, where I have the dark bruises and two front teeth chipped. The write-up says I came off the door when he came to a standing position, the disposition states, while they were being applied. This is a clear contradiction and proves that I was attacked on a calculated plan because of the ~~previous~~ <sup>previous</sup> write-up I caught from Ms. Foster. Enclosed is the write-up as evidence. I am ~~Sincerely~~ not grieving this ~~Arthur Ballinger~~ write-up I am showing this was a planned assault against me, I was assaulted because of a write-up I had caught two weeks before I am not grieving the write-up by OFFICER young as said by the Capt. and Warden I am grieving the assault I took as a result of a previous write-up.

this is just another example of the harassment I am enduring at the hands of correctional officers here at Mt. Olive, I have two previous lawsuits pending in this honorable court, regarding this constant harassment, regarding "religious" and other attacks against me. I did as I was told and was assaulted by several officers not once but several times in about a half hour. Officer Young then wrote me up for a rule violation, as I was being beaten they were telling me this is for MS. Foster and MS. Eggleston referring to previous write-ups I had caught. My two front teeth are chipped and I have dark bruises on my left side were I took the assault. This harassment happens every day. I am not grieving this write-up I am showing <sup>Sincerely</sup> that this was a ~~calculated~~ <sup>authentic</sup> ~~Balvin~~ <sup>Balvin</sup> calculated and planned beating MS. Foster was no where in sight when the first beating occurred, I am showing this was punishment from a write-up I had caught from MS. Foster previously "the beating" she was present for the second beating I took, the write-ups clearly show's the ~~the~~ two contradictions from the report and disposition. This was an assault that was planned and calculated I did what I was told and was assaulted

V. Relief (continued)):

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VII. Counsel

- A. If someone other than a lawyer is assisting you in preparing this case, state the person's name:

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- B. Have you made any effort to contact a private lawyer to determine if he or she would represent you in this civil action?

Yes ☒ No ☐

If so, state the name(s) and address(es) of each lawyer contacted:

Carl Bryant P.O. Box 176 St Marys W.V. 26170

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If not, state your reasons: 

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- C. Have you previously had a lawyer representing you in a civil action in this court?

Yes ☐ No ☒



If so, state the lawyer's name and address:

\_\_\_\_\_  
\_\_\_\_\_

Signed this 12 day of August, 20 08.

Arthur Ballinger IV  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Signature of Plaintiff or Plaintiffs

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 8-12-08  
(Date)

Arthur Ballinger IV  
Signature of Movant/Plaintiff

\_\_\_\_\_  
Signature of Attorney  
(if any)

## WEST VIRGINIA DIVISION OF CORRECTIONS

Incident Report No. 115213Docket No. 115213-0176

## VIOLATION REPORT

ARTHUR BALLINGER

(Inmate's Name)

42036

(Number)

is hereby charged with a violation of

Disciplinary Rule No. 2.01, the violation being REFUSING AN ORDER,having occurred at 0900 HOURS on 22 JULY 2008.  
(Time) (Day) (Month) (Year)

The circumstances of the violations are as follows: (Describe the particular action of the inmate, which is the basis of this charge.)

ON TUESDAY, 22 JULY 2008 AT APPROXIMATELY 0910 HRS I WAS WORKING MY ASSIGNED POST AT MOUNT OLIVE CORRECTIONAL COMPLEX, MOUNT OLIVE WEST VIRGINIA, FOR THE CORRECTIONAL HEARING OFFICER AS THE DAILINE COLE ADAMS AND I WENT INTO POD 6 TO GET INMATE ARTHUR BALLINGER #42036 FOR COURT HEARING THAT WAS SCHEDULED FOR THIS DAY. AFTER COMPLETING A STRIP SEARCH OF INMATE BALLINGER I THEN APPLIED MECHANICAL WHIP RESTRAINTS AND GAVE HIM A VERBAL DIRECTION HOW TO EXIT HIS CELL. AFTER EXITING HIS CELL INMATE BALLINGER PLACED HIS SHOULDER ON THE DOOR FRAME SO THAT MECHANICAL LEG RESTRAINTS COULD BE APPLIED. AFTER APPLYING THE RESTRAINTS AS I WAS RETURNING TO A STANDING POSITION, INMATE BALLINGER CAME OUT THE DOOR FRAME AND TURNED IN AN AGGRESSIVE MANNER. DUE TO INMATE BALLINGER NOT FOLLOWING VERBAL DIRECTION, INMATE BALLINGER IS IN DIRECT VIOLATION OF POLICY DIRECTIVE 325.00 RULE 2.01 REFUSING AN ORDER.

Charging Employee [Signature] Shift Commander \_\_\_\_\_Chief of Security/Designee [Signature]Inmate To Be Charged [Signature] Yes \_\_\_\_\_ No \_\_\_\_\_

TO THE INMATE: You are advised that you are to appear before the magistrate on the above charge at

0900 on 22 JULY 2008.  
(Time) (Date)

**THESE ARE YOUR RIGHTS:** You are hereby advised that you have the right to testify in your own behalf, present documentary evidence, call witnesses in support of your position, cross-examine witnesses, and seek the assistance of a representative to help you answer the charges. Within fifteen (15) days of receiving a copy of the Hearing Report, you may submit a written appeal to the Warden; furthermore, within fifteen (15) days after your appeal to the Warden has been answered and returned to you, you may submit a written appeal to the Commissioner of Corrections.

I attest by signature that 1235 on 24 JULY 2008 I presented to the inmate whose name  
(Time) (Day) (Month) (Year)

appears above a copy of this Disciplinary Report.

[Signature]  
(Signature of Employee)

Q-607

# WEST VIRGINIA DIVISION OF CORRECTIONS

## HEARING REPORT

DOCKET NO: MOC-08-0687-G

INCIDENT DATE: 7/22/2008

NAME: Arthur Ballinger

DOC #: 42016

VIOLATION 2.01-Refusing An Order

PLEA ENTERED No Plea

INMATE REPRESENTATIVE None

DOC#:

INMATE WITNESS (ES) None

STAFF WITNESS (ES) COII John Young (Presence waived)

### EVIDENCE PRESENTED: (DOCUMENTARY)

Violation Report, Incident Report of COII John Young, Disciplinary Hearing Waiver, Photos of Inmate, and Incident Reports of COII Garrett Adams, LPN Kelly Foster, Cpl. Nate Kendrick, and Sgt. Don Slack

### SUMMARY OF TESTIMONY:

The presence of COII John Young is waived so his reports will stand on their own merit. The report states the Defendant turned while leg restraints were being applied.

Defendant was not present for this hearing as he refused to attend and the hearing was held without his presence. Therefore, No Plea is entered on his behalf.

### FINDINGS:

Information in the reports and the Defendants refusal to attend the hearing to present a defense or dispute the facts of the reports, all support the finding of Guilty.

### DISPOSITION:

Thirty (30) days punitive segregation and thirty (30) days loss of all privileges suspended to probation for six (6) months to end on 28 January 2008.

HEARING DATE: 28-Jul-08

CORR. HEARING OFFICER

Brian Greenwood

LOSS OF GOOD TIME

(Approved)(Disapproved)

(Warden's Signature)

I attest by my signature that 0835 on 30 July 2008 presented to the inmate whose name appears above a copy of this hearing report.

(Signature of Employee)

COII John Young

Monday, July 28, 2008

AUG 14 2008

RECEIVED

AUG 01 2008 Policy Directive 335.00  
01 September 2007  
Attachment #1

RECEIVED

JUL 24 2008

RECEIVED

JUL 28 2008

## WARDEN'S OFFICE

West Virginia Division of Corrections

## Inmate Grievance Form

WV DIV. OF CORRECTIONS

Q2

## WARDEN'S OFFICE

Grievance No. 08 max Q2 558Arthur Ballinger  
Inmate Name42016  
DOC #7-23-08  
Date of GrievanceGrievance is initiated by tendering this document to Unit Manager: MR. Capt. Matheny

State Nature of Grievance/Issue to be Addressed - [Note: One (1) issue per grievance; be concise]:

yesterday OFFICER young and another officer I do not know his name  
came to get me for magistrate court. I told OFFICER young I had a  
envelope to put in the mailbox. When I backed out of my cell I put my  
see attached 8.5 x 11 sheet on back of 6-11Inmate's Signature: Mr. Arthur Ballinger [The inmate may attach one (1) 8.5 x 11 sheet if necessary at this level only.]Unit Manager's Response (attach additional sheet if needed): MR. Ballinger you were screened by  
medical and pictures were taken you claimed NO injuries at  
this time. The write up cannot be grievued it must be done thru  
the appeal processSignature of Unit Manager: Capt. R. Matheny Date: 24 July 08Resolved: \_\_\_\_\_ (If so, initial and give copy to Unit Manager) Appealed to Warden/Administrator: AB (Initial)

If no response at initial level is included, the inmate certifies that he/she has tendered this grievance as indicated above and no response has been issued at that level within the time frames as set forth in Policy Directive 335.00.

Inmate's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Action by Warden/Administrator: \_\_\_\_\_ Remand to Unit for further action

☒ Affirm unit and deny grievance☐ Grant the Grievance as specified☐ Reject for failure to follow grievance procedureComments: The Captain is correct. Issues pertaining to disciplinary matters are  
addressed through the disciplinary appeal process in accordance with Policy Directive  
325.00, DisciplineWarden/Administrator's Signature: Dan BullenDate: 29 July 2008

(Warden/Administrator may attach additional sheets, if necessary)

Resolved: \_\_\_\_\_ (If so, initial and give copy to Unit Manager) Appealed to Commissioner: AB (Initial)

If no response at Warden/Administrator's level is included, the inmate certifies that he/she has tendered this grievance as indicated above and no response has been issued at that level within the time frames set forth in Policy Directive 335.00

Inmate's Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Action by Commissioner: \_\_\_\_\_ Remand to Warden/Administrator/Unit for Further Action

☒ Affirm Warden/Administrator and Deny Grievance☐ Grant the Grievance, as specified ☐ Reject for failure to follow procedure ☐ Deny for reasons other than specified at unit levelCharlene Sotak  
Signature of Commissioner/Designee8-12-08  
Date of Action

(Commissioner's response may include additional sheets, if necessary.)

Pursuant to this policy, the Warden/Administrator may set forth procedures to allow for the Unit Manager to designate staff to respond.

Shoulder on the wall like told, they put the shackles on me and I was told to "come on Art" by officer Young, I had an envelope in my hand, as I was going out the door the officer with Mr. Young ~~beat~~ tackled me at which time he and Mr. Young beat and kicked me repeatedly at which time I was taken to the Multi Purpose room / Medical unit station where MS. Foster and ~~the~~ Nurse she was training, I was then Kicked, punched and beaten repeatedly, then forced to apologize to MS. Foster and was checked out by her, they made her leave at which time I was assaulted again while being held in a chair Mr. McCloud grabbed me by the chin and said we will break you one way or another then hit me in the mouth and he said "Oh yeah" you have another beating coming from the captain but the one he gives you, you are going to medical on a gurney at which time the C.O in charge had the camera taping me and the other C.O's were punching me repeatedly in the ribs. They brought me back to the unit without further medical attention.

Like I said I did not become aggressive or threatening I had an envelope in my hand I was brutalized because of a previous write-up assault is not a punishment for a write-up, I am being brutalized by officers and for my life I was written up because of this assault.

Please Sincerely Arthur Ballin Jr  
 respond my front four teeth were chipped during the assault

Arthur Ballinaer IV  
MT. Olive cor  
P.O. # 4206  
QII 3, 301  
ONE Mountain Side Way  
MT. Olive, W.V. 25185



CLERK, UNITED STATES DISTRICT COURT  
110 North Herber STREET, ROOM 119  
BECKLEY, W.V. 25801